

**TESTIMONY OF BUFORD L. ROLIN
CHAIRMAN OF THE POARCH BAND OF CREEK INDIANS**

**ON THE NATIONAL INDIAN GAMING COMMISSION'S
CLASS II RULEMAKING EFFORTS**

SEPTEMBER 19, 2006

Good afternoon. Chairman Hogen and Commissioner Choney, my name is Buford Rolin and I am the Chairman of the Poarch Band of Creek Indians. I appreciate the opportunity to be here today, and to share with you the reasons why we object to the Commission's current activities as they relate to the classification of games under the Indian Gaming Regulatory Act.

Our primary objection to this rulemaking is that it adds new requirements that must be satisfied for a game to remain a class II game. Because the Commission has never before required class II games to contain these features, they are not presently included on any existing game. As a result, if these Proposed Rules are finalized, all existing class II games will instantly become class III, and therefore require a Tribal-State Compact for their continued operation.

As you well know, the Poarch Band of Creek Indians has conducted gaming in the State of Alabama for more than twenty years. For the past fifteen years, we have been attempting to negotiate a Tribal-State Compact. Although the State permits a broad range of gaming that, if offered on Indian lands would fall within the category of class III gaming, the State has consistently ignored our repeated requests to negotiate.

What's more is that during the very same time as the State was refusing to meet with the Tribe, they have allowed class III gaming to flourish. Within the last five years in particular, the scope of class III gaming in Alabama has grown dramatically.

In 2003, voters in two Alabama counties approved the operation of bingo games by certain nonprofit organizations. Macon County, which is a mere 30 miles from the Tribe's Wetumpka facility, is home to the Victoryland Race Track. Interestingly, the race track is the only qualifying "nonprofit" organization within the county. Under this authorization, the race track now operates more than 3,000 electronic bingo machines – machines that the Tribe is prohibited from operating.

While these games satisfy the State's definition of bingo, they contain features that, in the eyes of the Commission, transform them into class III games – the most obvious of these features being auto-daub. Despite the fact that these one-touch games are being played legally within the State, they are off-limits to the Tribe.

Late last year, the race track in Birmingham began operating electronic sweepstakes machines. While the State challenged the operation of these games, the court found them to fall within a "loophole" of Alabama law. These games are now spreading throughout the state, further impacting our ability to remain competitive. Again, the Commission has advised us that they would consider these games to be class III if we attempted to operate them.

At the very same time that state voters were expanding the scope of gaming in Alabama, our Tribe was forced to scale-back our games. In early 2004, the Commission identifying a number of our games as being "questionable." Though we disagreed with the Commission's findings, we removed 76 games and modified approximately 600 others. The Tribe's efforts to work with the Commission resulted in a 56% decrease in net income. A 56% decrease. Notably, the game features that we were forced to remove are the very same ones that are still being used at the race track.

Unfortunately, the impact of the Commission's directive was actually far greater as the Tribe chose not to fire existing employees. And as the State's race tracks continue to expand, and as sweepstakes games continue to spread, our revenues continue to decline.

None of us can imagine any other type of business that would be denied the right to expand while their competition is permitted to thrive. This, however, is exactly what is happening to us. The State continues to refuse to negotiate with the Tribe for the very same games that they are permitting elsewhere. They are also opposing our pending request for Secretarial Procedures.

Adding insult to injury, the Commission is now attempting to narrow the scope of class II gaming. With the addition of random requirements, the Proposed Rules would limit the Tribe to even slower-playing and less entertaining games than we currently operate. Our competitors, however, will remain unaffected.

The impact of this regulation on my Tribe is quite simple. We will no longer be able to keep pace with our competitors, and eventually, will be forced to close our doors. Such a dramatic change to the legal landscape seems unconscionable, particularly given the lack of any supporting court action or congressional enactment.

If the Commission moves forward with this rulemaking, it is our estimate that the revenues of our Atmore facility will be impacted by an additional 80%. This impact will only increase as the casinos on the gulf coast damaged by last year's hurricanes resume operation. With competition in central Alabama continuing to expand uninhibited, the Tribe's facilities in Montgomery could no longer remain competitive and would be forced to close – closures that would result in the loss of more than 500 total jobs.

We object to the fact that we will be required to replace all of our games with slower and less profitable games. Slowing the game to the point where it is no longer economically viable can by no stretch of the imagination, be seen to further the intent of IGRA. This is especially true as technology is never intended to limit the commercial success of an industry.

The Commission should not place tribes at a competitive disadvantage, particularly in the absence of a *Seminole* fix. Consideration must be given to tribes that find themselves in the rare situation in which we find ourselves. We should not be penalized because the State refuses to

follow the law. We should be allowed to operate not only those games authorized by IGRA, but also those that incorporate features that are legal in our State. If the Commission insists on moving forward with this rulemaking, an appropriate grandfather clause must be incorporated.

Gaming is the primary economic enterprise for my Tribe. It has provided our rural communities with jobs – both for our tribal members and for our neighbors. It has also allowed us to add to our community's tax base. In fact, in 2004, our operations generated more than \$15 million dollars in federal income, payroll, sales and excise taxes. Our payroll that year exceeded \$11 million, and we spent more than \$35 million on goods and services. Gaming has provided us the ability to educate our children, build houses and medical clinics, and improve the lives of our elderly. To eliminate these benefits would be a devastating blow to both the Tribe and the other residents of Alabama.

While the long-term implications of this rulemaking on all tribes are immense, few will be impacted as immediately as Poarch Creek. Our ability to conduct gaming on an equal footing with our competitors is already severely limited. If the Commission finalizes these Proposed Rules, our ongoing struggle to maintain equal footing with our competitors will simply become an impossibility.

I thank you for the opportunity to provide these comments.

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